

## West Virginia Workplace Freedom Act: Free From Injunction

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During the 2016 Regular Session of the West Virginia Legislature, Senate Bill 1 – otherwise known as the “West Virginia Workplace Freedom Act” – became law after that Legislature overrode a gubernatorial veto on February 12, 2016. Or so everyone thought. A number of labor organizations sought an injunction prohibiting the law’s enforcement just four days before the Workplace Freedom Act took effect on July 1, 2016, with a filing in the Circuit Court of Kanawha County, West Virginia.

The labor organizations’ primary challenge to the Workplace Freedom Act was constitutional, alleging that the new statute infringed upon their respective associational rights, represented an unconstitutional taking of their property without just compensation, and violated their liberty interests. After a hearing on August 10, 2016, in which she ruled in the labor organizations’ favor from the bench, Circuit Judge Jennifer Bailey entered an order granting the requested injunction on February 24, 2017.

The Attorney General petitioned the Supreme Court of Appeals of West Virginia to overturn the Circuit Court’s injunction order. The Supreme Court, in an opinion drafted by Justice Ketchum, did just that on Friday, September 15, 2017 - although the effective date of the Court’s opinion remains on the horizon. In so doing, the Supreme Court found that the labor organizations were not likely to prevail on the merits of their constitutional challenges to the Workplace Freedom Act. Justice Ketchum focused on the labor organizations’ inability to point to a single jurisdiction where a similar challenge was upheld in any of the twenty-seven other states to have enacted a right-to-work law. In his concurring opinion, Chief Justice Loughry likewise noted the absence of any successful similar challenge in the individual right-to-work states and highlighted the United States Supreme Court ruling passing judgment upon the labor organizations’ arguments some time ago.

With the Circuit Court’s injunction slated to be dissolved, the Workplace Freedom Act will soon be an enforceable statute in West Virginia. Therefore, in the State of West Virginia, it will be illegal for companies and unions to agree to a contract provision that requires an employee to join or remain in a union in order to be employed. It also grants West Virginia employees the right to refuse to pay any dues, fees, assessments, or other similar charges to a labor union.

The Supreme Court did remand the matter to the Circuit Court for further proceedings and for a decision on the merits with both Justice Ketchum and Chief Justice Loughery’s opinions encouraging an expeditious ruling. This decision will not take effect until the mandate issues, which unless shortened or enlarged by Court order, should be thirty days from release of the opinion. For now,

however, West Virginia is, again, on the path to join twenty-seven other states as a right-to-work jurisdiction.

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